

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

GEORGE JOHNSON,

Plaintiff,

v.

DONALD P. WANG, et al.,

Defendants.

CASE NO. C16-1738JLR

ORDER ON MOTIONS

**I. INTRODUCTION**

Before the court are Plaintiff George Johnson's motion for default (MFD (Dkt. # 9)) and counsel for Defendant Donald P. Wang's motion to withdraw from this matter (MTW (Dkt. # 12)). The court has considered the motions, the relevant portions of the record, and the applicable law. Being fully advised,<sup>1</sup> the court GRANTS Mr. Johnson's

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<sup>1</sup> No party requested oral argument on either motion, and the court finds that oral argument would not be helpful to its disposition of the motions. Local Rules W.D. Wash. LCR 7(b)(4).

1 motion for entry of default, DIRECTS the Clerk to enter default, and GRANTS counsel  
2 for Mr. Wang's motion to withdraw.

## 3 II. BACKGROUND

4 On November 10, 2016, Mr. Johnson filed his complaint in this matter. (Compl.  
5 (Dkt. # 1).) Mr. Johnson alleges that Mr. Wang failed to pay Mr. Johnson \$7,380.00 in  
6 wages. (*Id.* ¶ 8.) Mr. Johnson seeks compensatory and punitive damages for the alleged  
7 failure to pay wages, attorney's fees and costs, prejudgment interest, and other forms of  
8 relief. (*See id.* ¶¶ 7-8.)

9 On January 24, 2017, Mr. Johnson moved for entry of default against Mr. Wang.  
10 (MFD at 1.) Mr. Johnson supports his motion for entry of default with a declaration  
11 attesting that Mr. Wang was served on December 31, 2016. (*See* Merriam Decl. (Dkt.  
12 # 10) ¶ 2, Ex. 1.) Later that same day, attorney Thomas Waller appeared on Mr. Wang's  
13 behalf. (Not. (Dkt. # 11).) On February 2, 2017, Mr. Waller moved to withdraw as Mr.  
14 Wang's attorney. (MTW at 1.) On February 9, 2017, Mr. Wang filed an answer *pro se*.  
15 (Answer (Dkt. # 13).)

16 The court now addresses the motion for entry of default and the motion to  
17 withdraw.

## 18 III. ANALYSIS

### 19 A. Motion for Default

20 Federal Rule of Civil Procedure 55(a) provides: "When a party against whom a  
21 judgment for affirmative relief is sought has failed to plead or otherwise defend, and that  
22 failure is shown by affidavit or otherwise, the clerk must enter the party's default." Fed.

1 R. Civ. P. 55(a). The court's local rules provide that an affidavit filed in support of a  
 2 motion for default "shall specifically show that the defaulting party was served in a  
 3 manner authorized by Fed. R. Civ. P. 4." *See* Local Rules W.D. Wash. LCR 55(a). In  
 4 other words, proper service of the summons and complaint is a prerequisite to an order of  
 5 default. *See id.*

6 A party fails to defend against the action when the party fails to file an answer or  
 7 other responsive pleading. *See Friedmann v. Washington*, No. 09-5761RJB, 2010 WL  
 8 890053, at \*1 (W.D. Wash. Mar. 8, 2010) (finding the entry of default inappropriate  
 9 where the defendants had filed an answer); *but see Hunter v. Dutch Gold Resources, Inc.*,  
 10 No. 1:11-cv-01450-CL, 2012 WL 3614336, at \*1 (D. Or. Aug. 20, 2012) (finding that a  
 11 party may signal that it intends to defend against the action by stating its intent and  
 12 actively seeking counsel to represent it). A failure to defend makes it impractical—if not  
 13 impossible—for the court to adjudicate the matter on the merits. *See Keehi Marine, Inc.*  
 14 *v. Mia*, No. 14-00411 LEK-RLP, 2016 WL 3571421, at \*3 (D. Haw. May 10, 2016).

15 Because Mr. Wang failed to defend against the action by the time Mr. Johnson  
 16 moved for entry of default, the Clerk must enter default. *See* Fed. R. Civ. P. 55(a); (Dkt.)  
 17 Mr. Johnson moved for entry of default on January 24, 2017 (MFD), whereas Mr.  
 18 Wang's attorney did not appear in this matter until later that day<sup>2</sup> (Not.) and Mr. Wang

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20 <sup>2</sup> Even if Mr. Wang's counsel had appeared before Mr. Johnson moved for entry of  
 21 default, notice of appearance alone does not preclude entry of default when the defendant has  
 22 taken no other actions in the case. *See United States v. Real Prop. Located at 4433 Colburn*  
*Culver Rd., Sandpoint, Bonner Cty., Idaho*, No. 2:10-cv-00181-REB, 2011 WL 4505355, at \*2  
 (D. Idaho Sept. 28, 2011) (stating that a notice of appearance alone may be insufficient to

1 did not file an answer until February 9, 2017 (Answer).<sup>3</sup> Mr. Wang does not oppose Mr.  
 2 Johnson's motion. (*See* Dkt.) In addition, Mr. Johnson provides an affidavit that  
 3 specifically shows that he served Mr. Wang with a copy of the summons and complaint  
 4 on December 31, 2016. (Merriam Decl. ¶ 2, Ex. 1.) For these reasons, the court  
 5 concludes that entry of default against Mr. Wang is appropriate and directs the Clerk to  
 6 enter Mr. Wang's default. If Mr. Wang wishes to defend against the action, he may move  
 7 to set aside the default pursuant to Federal Rule of Civil Procedure 55(c) or contest any  
 8 future motion for default judgment.<sup>4</sup>

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 12 preclude entry of default, but that when the notice is coupled with an objection to entry of  
 13 default, entry of default is inappropriate).

14 In addition, Local Civil Rule 55(a)'s 14-day notice requirement, Local Rules W.D. Wash.  
 15 LCR 55(a), does not apply here because counsel for Mr. Wang appeared after Mr. Johnson filed  
 16 the motion for default (*compare* MFD, *with* Not.).

17 <sup>3</sup> Mr. Wang filed his answer *pro se*. (*See* Answer.) Pursuant to Local Civil Rule  
 18 83.2(b)(4), "[w]hen a party is represented by an attorney of record in a case, the party cannot  
 19 appear or act on his or her own behalf in that case . . . until after the party requests by motion to  
 20 proceed on his or her own behalf." Local Rules W.D. Wash. LCR 83.2(b)(4). Accordingly, at  
 21 the time he filed it, Mr. Wang's answer was improper. However, the court will not strike Mr.  
 22 Wang's answer because the court grants Mr. Waller's motion to withdraw as counsel. *See infra*  
 § III.B. However, the court DIRECTS Mr. Wang to comply with all applicable Federal Rules of  
 Civil Procedure and Local Civil Rules going forward.

<sup>4</sup> Rule 55(c) provides that "[t]he court may set aside an entry of default for good cause."  
 Fed. R. Civ. P. 55(c). Courts in the Ninth Circuit evaluate whether a party has shown good cause  
 to set aside an entry of default by analyzing three factors: (1) "whether the plaintiff will be  
 prejudiced," (2) "whether the defendant has a meritorious defense," and (3) "whether culpable  
 conduct of the defendant led to the default." *Brandt v. Am. Bankers Ins. Co. of Fla.*, 653 F.3d  
 1108, 1111 (9th Cir. 2011) (internal quotation marks omitted). In addition, the court has  
 discretion in deciding whether to grant a motion for default judgment after the Clerk has entered  
 default. *See Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986) (listing seven factors that  
 guide the court's discretion in this area).

1 **B. Motion to Withdraw**

2 Local Civil Rule 83.2(b)(1) provides that unless there is a change of counsel  
3 within the same law firm, an attorney may withdraw from representation only by leave of  
4 court. Local Rules W.D. Wash. LCR 83.2(b)(1). “Leave shall be obtained by filing a  
5 motion or a stipulation and proposed order for withdrawal . . . .” *Id.* The court will  
6 ordinarily permit an attorney to withdraw until 60 days before the discovery cut-off. *Id.*  
7 A motion for withdrawal “shall include a certification that the motion was served on the  
8 client and opposing counsel.” *Id.* In addition, if the attorney’s withdrawal will leave a  
9 party unrepresented, the motion must include that party’s address and telephone number.  
10 *Id.*

11 Mr. Waller and the firm Bauer Moynihan & Johnson LLP move to withdraw as  
12 counsel of record for Mr. Wang. (MTW at 1.) The motion to withdraw certifies that on  
13 February 2, 2017, Mr. Waller served the motion and proposed order of withdrawal on Mr.  
14 Wang and opposing counsel, and the motion includes Mr. Wang’s address and telephone  
15 number. (*Id.*) Mr. Waller also filed the motion more than 60 days before the discovery  
16 cut-off; indeed, the court has not yet issued a scheduling order in this matter. (*See*  
17 *generally* Dkt.) Further, no party opposes Mr. Waller’s motion. (*See generally id.*)  
18 Accordingly, the court grants the motion to withdraw.

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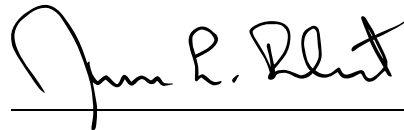
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1 **IV. CONCLUSION**

2 For the reasons set forth above, the court GRANTS Mr. Johnson's motion for  
3 entry of default (Dkt. # 9), DIRECTS the Clerk to enter default against Mr. Wang, and  
4 GRANT's Mr. Waller's motion to withdraw (Dkt. # 12).

5 Dated this 10th day of February, 2017.

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8 JAMES L. ROBART  
9 United States District Judge  
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